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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,815	09/24/2003	Christopher J. Leszczynski	BGN1114	1971
7590 08/05/2004			EXAMINER	
Sean A. Kaufhold P.O. Box 131447 Carlsbad, CA 92013			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/668,815

Applicant(s)

LESZCZYNSKI, CHRISTOPHER J.

Examiner

Katherine M Moran

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendment of 6/22/04 has been received and reviewed. Applicant deleted claims 2, 3, and 8 and added new claims 10-13. Claims 1, 4-7, and 9-13 are pending.

The indicated allowability of claim 9 and the indicated allowable subject matter of claims 2, 3, and 8 are withdrawn in view of the newly discovered reference(s) to Parker (U.S. 5,572,836) and Preziosi et al. US 2003/0051317. Rejections based on the newly cited reference(s) follow.

Information Disclosure Statement

Please note that the listing of US 438,820 to Goulding is incorrect and should be US D438,820.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai (U.S. 6,481,060) in view of Parker (U.S. 5,572,836). Tsai discloses the invention substantially as claimed. Tsai teaches a hat mountable flag device for removably positioning on a hat, the device comprising an elongated rod shown in Figure 3A having first and second ends, a

Art Unit: 3765

flag 30 formed of rigid material mounted on the rod and extending outwardly away from the rod, and a fastener 10 attached to the second end of the rod for removably attaching the rod to the hat. The fastener includes a u-shaped clip 13 having a pair of legs and a central section extending between the legs with the rod being attached to the legs such that a longitudinal axis of the rod extends through each of the legs. However, Tsai does not teach a rod with a brake therein such that a first section and a second section of the rod is defined, a coupler attached to the first and second sections for pivotally coupling the sections together such that an angle between the sections may selectively be chosen, with the angle generally from 45 to 180 degrees. Parker '836 teaches a flag holding rod 12 with first section and second section 14 pivotally connected by a coupler 20,25,28 for selectively pivoting the rod portions in relation to each other. The coupler allows for selective positioning of the flag in relation to the rod as shown in Figure 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the rod of Tsai with the coupler as taught by Parker, to provide the flag device with an added degree of versatility.

3. Claims 1, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai '060 in view of Preziosi et al. (US 2003/0051317). Tsai discloses the invention substantially as claimed. However, Tsai does not teach a fastener including a plate attached to the rod, the plate being positioned in a plane orientated generally perpendicular to a longitudinal axis of the rod, the plate having a peripheral edge having a slot extending therein. Preziosi teaches a fastener shown in Figures 2-5, including a plate 52 positioned in a plane orientated generally perpendicular to a longitudinal axis of a vertically extending novelty member 19,40, the plate having a peripheral edge and a slot 54 extending therein (Figure 3). Figure 2 shows the

Art Unit: 3765

fastener attached to a button of a hat. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the fastener configuration of Preziosi for the fastener of Tsai, so that the ornament may be placed in a prominent location on a hat, without interfering with the wearer's light of sight.

Conclusion

4. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (703) 305-0452. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (703) 305-1025. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

July 29, 2004



Katherine Moran

Primary Examiner, AU 3765